

# LOVE AND MARRIAGE...AND IMMIGRATION

## A practical guide to immigration for your Filipino fiancée/fiancé or spouse

*If you are reading this, you are at least thinking seriously about marrying a Philippine citizen. This fact sheet will answer some of the most frequently asked questions about immigration to the United States for your Filipino fiancée/fiancé or spouse.*

*Please keep in mind that this sheet gives only a brief summary. If you have any specific questions about Philippine laws, please consult an **attorney** in the Philippines. If you have any further questions about U.S. laws, please see the references at the end of this fact sheet.*

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### **Is it possible to get a visa for my Filipino fiancée/fiancé or spouse to come to the United States?**

Yes. IR-1 and K-3 visas are for the spouses of U.S. citizens. K-1 visas are issued to the fiancées/fiancés of U.S. citizens.

### **What is the difference between an IR-1, a K-3 and a K-1 visa?**

If you are already married, an IR-1 visa allows your spouse to immigrate to the U.S. If you have been married for less than two years, the status will be conditional for two years from your spouse's first entry to the United States. After that, your spouse is eligible to become a legal permanent resident ("Green Card" holder). For those married longer than two years, this does not apply.

The K-3 visa is a way to expedite your spouse's arrival in the United States. For your spouse to apply for this visa, you must file two petitions; one for the IR-1 visa, as above, and another for the K-3 visa. The K-3 visa permits your spouse to travel to the U.S. as a non-immigrant. If approved, your spouse can use the K-3 visa to enter and leave the United States for up to 24 months during the approval process for the IR-1 petition. Once that petition is approved, your spouse can adjust status to conditional residence, as above.

A K-1 visa is a nonimmigrant visa that allows your fiancée/fiancé to go to the United States to marry you there. Your fiancée/fiancé must marry you within 90 days of arrival in the United States or return to the Philippines.

### **Is one type of visa better than the other?**

That depends on your personal preference. If you wish to get married in the Philippines, you will need to apply for an IR-1 visa (and possibly a K-3 visa) AFTER you are married. However, if you would like to marry in the United States, your fiancée needs a K-1 fiancée/fiancé visa. Both K-1 and K-3 visas offer certain advantages, such as:

- Generally shorter waiting period for K-1 or K-3 than IR-1 (average total processing time of 6-12 months for a K-1 or K-3 visa and 12-24 months for an IR-1 visa);
- Unmarried minor children may be included without a separate visa petition for K-1 and K-3 visas.

IR-1 visas, on the other hand, offer the advantage of relieving the applicant of further processing with the Immigration and Naturalization Service in the U.S. after arrival (except for the removal of the conditional status after two years of marriage).

### **After we decide which type of visa we want, what is the next step?**

You should file a petition with the office of the Immigration and Naturalization Service (INS) that covers your permanent place of residence in the United States.

Petition forms for K-1 fiancée visas and K-3 spouse visas (Form I-129F), or IR-1 spouse visas (Form I-130) are available from any INS office in the United States or the INS office at the U.S. Embassy in Manila, located at Window 35 in the Immigrant Visa waiting area.

## **PROCEDURES FOR IR-1 (SPOUSE) VISAS**

First, you must be legally married in order to petition for your spouse to immigrate to the United States. In most cases, that marriage takes place in the Philippines.

### **How do I get married in the Philippines?**

**STEP 1:** Obtain an “**Affidavit in Lieu of a Certificate of Legal Capacity to Contract Marriage**” at the U.S. Embassy’s American Citizen Services Branch Monday through Friday from 8:00 a.m. to 9:00 a.m. The fee for this notarial service is \$30. The U.S. citizen must present his or her U.S. passport. It is not necessary for the fiancée/fiancé to appear.

**STEP 2:** File an application for a marriage license at the office of the Philippine Civil Registrar in the town or city where one of the couple lives. In order to apply for a marriage license, you will need:

- *Your U.S. passport;*
- *The Affidavit from the U.S. Embassy;*
- *A divorce decree or spouse’s death certificate, if previously married, for all previous marriages;*
- *Proof that you have informed your parents if you are 22 to 24; or*
- *Proof of parental consent if you are 18 to 21.*

**STEP 3:** Get married!

### **Can my spouse take her/his children?**

Yes. However, a *separate* immigrant visa petition is required for *each* child in an IR case. That means if you want your spouse and her/his children to immigrate together, you must submit petitions for each one at the same time.

### **Can I file a petition if my permanent residence is in the Philippines?**

Yes, you may *file* a petition if you live overseas. However, for an IR-1 visa, you *MUST* be domiciled in the United States by the time your spouse appears for a personal interview at the Embassy.

**NOTE:** *Active-duty U.S. military personnel are considered to be domiciled in the United States while serving overseas.*

### **Are there any other requirements for filing a petition?**

Yes. To petition for a spouse:

- *You and your spouse must have been legally free to marry at the time of marriage. This means neither you nor your spouse had any prior unterminated marriages at the time of your marriage. Because there is no divorce in the Philippines, the only way for a marriage to end is through annulment or divorce overseas or the death of one spouse; and*
- *You must be validly married under the laws of the Philippines (see above)*

## What happens after I file the IR-1 petition with the INS?

- STEP 1:** INS Approval.  
IR-1 petitions are sent by the INS to the National Visa Center in New Hampshire for review of the documentation.  
*(NOTE: Approval of a visa petition by the INS does not necessarily mean that a visa will be issued. ONLY A CONSULAR OFFICER AT THE EMBASSY MAY DETERMINE A PERSON'S ELIGIBILITY TO RECEIVE A VISA.)*
- STEP 2:** The National Visa Center will send the necessary forms to the spouse, or to an agent designated by the spouse.  
(You will also be contacted and asked to complete the Affidavit of Support (Form I-864) and return it to the National Visa Center, which will review it for completeness)
- STEP 3:** The applicant or agent notifies the National Visa Center in writing when all of the required documents are ready. The National Visa Center will then forward all of the relevant documents to the U.S. Embassy, including your Affidavit of Support.
- STEP 4:** After receiving the case from the National Visa Center, the Embassy schedules an interview for the spouse with a consular officer. (It is NOT necessary for the U.S. citizen to attend this interview).
- STEP 5:** The Interview!  
If the consul determines that the applicant is eligible to receive a visa, it will generally be delivered to the applicant's residence by guaranteed courier service within a week after the date of the interview; *OR*  
If the consul determines that the applicant is NOT eligible, the consul will either:  
1) explain, in writing, how the applicant can correct the problem and return for another interview or; 2) will give the applicant a written explanation of the ineligibility and return the petition to the INS.

## **PROCEDURES FOR K-3 (spouse) VISAS**

### **How do I file a K-3 petition?**

After filing the IR-1 petition and receiving a notice from the INS saying it was received, you can file a K-3 petition. The K-3 petition uses a separate form (Form I-129F), the same one used for K-1 (fiancé/ée) applicants. The K petitions are generally processed considerably faster than IR petitions. This is the advantage of the K-3 visa. With an approved K-3 visa, your spouse can wait in the U.S., rather than overseas, for the IR-1 petition (and adjustment of status) to be approved. You must file *both* petitions (for an IR-1, and then for a K-3) in order for your spouse to get a K-3 visa.

A K-3 visa will allow your spouse to join you in the United States even before INS has processed the final visa petition (IR-1) paperwork. When your spouse enters the U.S., he/she is expected to begin processing an adjustment of status with INS.

### **Can my spouse take her/his children?**

Yes. K-3 visas allow unmarried minor (under 21 years old) children to travel to the U.S., either at the same time as your spouse or at a later date (within one year). All of the children may be included in the petition for your spouse. A separate petition is not required for each minor child.

### **Can I file a petition if my permanent residence is in the Philippines?**

Yes, you may *file* a K-3 petition if you live overseas but it must be mailed to the correct INS service center in the United States (Send to: Missouri Service Center, Po Box 648004, Lee Summit, MO 64603). For a K-3 visa, you must either maintain a permanent residence in the U.S. or plan to establish a permanent residence in the U.S. after you marry your fiancée/fiancé.

**NOTE:** *Active-duty U.S. military personnel are considered to be domiciled in the United States while serving overseas.*

### **Are there any other requirements for filing a petition?**

Yes. To petition for a spouse:

- *You and your spouse must have been legally free to marry at the time of marriage. This means neither you nor your spouse had any prior unterminated marriages at the time of your marriage. Because there is no divorce in the Philippines, the only way for a marriage to end is through annulment or divorce overseas or the death of one spouse; and*
- *You must be validly married under the laws of the Philippines (see above information for IR-1 visas).*

## **What happens after I file the K-3 petition with the INS?**

- STEP 1:** INS Approval.  
K-3 petitions are processed and approved by INS's Missouri Service Center and are then sent to the National Visa Center. The NVC then sends a copy of the petition form only to the U.S. Embassy (no supporting documentation is included). This process generally takes 4-6 months.  
*(NOTE: Approval of a visa petition by the INS does not necessarily mean that a visa will be issued. ONLY A CONSULAR OFFICER AT THE EMBASSY MAY DETERMINE A PERSON'S ELIGIBILITY TO RECEIVE A VISA.)*
- STEP 2:** After receiving the approved petition from the INS, the Embassy sends a letter to the spouse instructing him/her to contact the Call Center at 1-909-101-0011 or 1-903-101-0011 for instructions on how to apply for the visa.
- STEP 3:** The courier service will deliver instructions and application forms to the applicant. The applicant may then proceed to St. Luke's Medical Center Extension Clinic in Manila to have a medical exam and to submit the required documents.
- STEP 4:** Visa processing – After the spouse's medical exam at St. Luke's, the Embassy will process the application and schedule an interview.  
If the consul determines that the applicant is eligible to receive a visa, it will generally be delivered to the applicant's residence by guaranteed courier service within a week of approval; OR  
If the consul determines that the applicant is NOT eligible, the consul will either:  
1) explain in writing how the applicant can correct the problem by submitting documents by courier;  
2) indicate that the case must be reviewed further (the applicant will be contacted when the review is complete; this may take several weeks), or;  
3) If the individual turns out to be ineligible to receive a visa, the officer will give the applicant a written explanation of the ineligibility and return the petition to the INS.  
Within four to six weeks of visiting St. Luke's, your spouse should have either the approved visa or a letter as described above.
- \*NOTE:** In some cases, the Embassy will not have received the visa petition from INS yet. In that case, if no documents are missing, we can process the application based on an I-797 Notice of Approval from INS. The spouse should include a copy of this with the application.

## **PROCEDURES FOR K-1 (fiancée/fiancé) VISAS**

First, you must have met your fiancée/fiancé in person within the two years prior to filing your petition. In most cases, this will mean that you will have been in the Philippines within the past two years. A K-1 visa will enable your fiancée/fiancé to travel to the United States once to marry you within 90 days of her/his arrival. The K-1 visa permits only a single entry to the United States. After the marriage takes place in the U.S., your fiancée/fiancé will need to apply to INS to “adjust status” to permanent residence.

### **Can my fiancée/fiancé bring her/his children?**

Yes. K-1 visas allow unmarried minor (under 21 years old) children to travel to the U.S., either at the same time as your spouse or at a later date (within one year). All of the children may be included in the petition of your fiancée/fiancé. A separate petition is not required for each minor child.

### **Can I file a petition if my permanent residence is in the Philippines?**

Yes, you may *file* a petition if you live overseas, but it must be mailed to an INS service center in the United States. For a K-1 visa, you must either maintain a permanent residence in the U.S. or plan to establish a permanent residence in the U.S. after you marry your fiancée/fiancé.

**NOTE:** *Active-duty U.S. military personnel are considered to be domiciled in the United States while serving overseas.*

### **Are there any other requirements for filing a petition?**

Yes. To petition for a fiancée/fiancé:

- *You must have met your fiancée/fiancé in person within the last two years;*
- *Both you and your fiancée/fiancé must be legally free to marry;*
- *You must intend to marry your fiancée/fiancé within 90 days of her/his arrival in the U.S.;*
- *Your fiancée or spouse must not have any prior unterminated marriages. Note that because there is no divorce in the Philippines, the only way for a marriage to end here is through annulment or the death of one spouse.*
- *You must acknowledge in writing, on the petition or by other signed statement, all minor children your fiancée/é may have.*

## **What happens after I file the K-1 petition with the INS?**

- STEP 1:** INS Approval.  
K-1 petitions are approved by the INS and are then sent to the U.S. Embassy. This process generally takes 4-6 months.  
*(NOTE: Approval of a visa petition by the INS does not necessarily mean that a visa will be issued. ONLY A CONSULAR OFFICER AT THE EMBASSY MAY DETERMINE A PERSON'S ELIGIBILITY TO RECEIVE A VISA.)*
- STEP 2:** After receiving the approved petition from the INS, the Embassy sends a letter to the fiancée/fiancé instructing her/him to contact the Call Center at 1-909-101-0011 or 1-903-101-0011 for instructions on how to apply for the visa.
- STEP 3:** The courier service will deliver instructions to the applicant. The applicant may then proceed to St. Luke's Medical Center Extension Clinic in Manila to have a medical exam and to submit the required documents.
- STEP 4:** Visa processing – After the fiancée/é's medical exam at St. Luke's, the Embassy will review the application.  
If the consul determines that the applicant is eligible to receive a visa, it will generally be delivered to the applicant's residence by guaranteed courier service within a week of approval; OR  
If the consul determines that the applicant is NOT eligible, the consul will either:  
1) explain in writing how the applicant can correct the problem by submitting documents by courier;  
2) indicate that the case must be reviewed further (the applicant will be contacted when the review is complete; this may take several weeks), or;  
3) request that the applicant appear for a personal interview. If the individual turns out to be ineligible to receive a visa, the officer will give the applicant a written explanation of the ineligibility and return the petition to the INS.  
So, within four to six weeks of visiting St. Luke's, your fiancée/é should have either the approved visa or a letter as described above.
- \*NOTE:** In some cases, the Embassy will not have received the visa petition from INS yet. In that case, if no documents are missing, we can process the application based on an I-797 Notice of Approval from INS. The fiancé should include a copy of this with the application.

### **What are some of the reasons a consular officer might deny a K-1, K-3 or IR-1 visa?**

Even if all of the paperwork has been completed correctly, there are some common problems with IR-1 and K-1 visas that can prevent the issuance of the visa. These include:

- *The Filipino spouse or fiancée/fiancé is already married to someone else and the prior marriage has not been legally terminated;*
- *The U.S. petitioner's prior marriage(s) has/have not been legally terminated ;*
- *The U.S. petitioner is unable to provide evidence of enough income or financial resources to support the spouse or fiancée/fiancé. The petitioner must submit an affidavit of support (Form I-134 for K-1 visas, form I-864 for IR-1 visas; K-3 visas will not usually require an affidavit) with evidence of current income, ideally the three most recent federal income tax returns (required for Form I-864). If the officer determines that the petitioner's financial resources are insufficient to support the applicant, the visa will not be issued until a suitable co-sponsor is found.*

In addition, the following may delay issuance of the visa:

- *The Filipino spouse or fiancée/fiancé has lived outside the Philippines for more than a year, but does not present police clearances from the other countries of residence;*
- *The petitioner did not submit separate petitions for each of the children of the Filipino spouse from a prior relationship (this applies only to IR-1 visas).*
- *The petitioner did not acknowledge in the petition the children of the Filipino fiancée/fiancé from a prior relationship (this applies only to K-1 visas).*

### **How do we receive the visa after it has been approved?**

In the case of an IR-1 visa, after the officer approves your spouse's visa, your spouse will be directed to the courier delivery service representatives on the Embassy compound to arrange for guaranteed courier delivery of your visa to any address you designate in the Philippines. For K-1 and K-3 visas, this delivery will have been arranged in advance with the Call Center. From the date of approval, delivery will normally take 3-5 days within Metro Manila and 5-7 days for provincial addresses.

### **Okay, we finally have the visa! How long is it valid after it has been issued?**

Both K-1 and IR-1 visas are valid for one entry into the United States during a period of six months from the date of issuance. K-3 visas are valid for multiple entries over two years.

### **Where can I find additional information?**

For general visa information, please see the Embassy's website at:

- <http://usembassy.state.gov/manila>

Information about K-1, K-3 or IR-1 visas is available from:

- The U.S. Embassy's Immigrant Visa Information Call Center in Manila at 1-909-101-0011 (24 hours a day, 7 days a week, at a cost of 25 pesos per minute); or
- The U.S. State Department's National Visa Center in New Hampshire at (603) 334-0700.
- The U.S. State Department's Consular Affairs website at <http://travel.state.gov>.

Information about immigrant visa petitions is available from:

- The INS office at the U.S. Embassy in Manila, Window 35 (open Monday to Friday from 8:00 to 11:00 a.m. and 1:00 to 3:00 p.m.); or by phone at (632) 523-1001, Ext. 2224; or
- The nearest office of the Immigration and Naturalization Service (INS) in the United States;
- The INS web site ([www.ins.usdoj.gov](http://www.ins.usdoj.gov)); or



- The U.S. State Department's National Visa Center in New Hampshire at (603) 334-0700.

Information regarding the "Affidavit in Lieu of a Certificate of Legal Capacity to contract Marriage" is available from:

- The Embassy's American Citizen Services Unit at (632) 523-1001, Ext. 2246.

**This chart compares the main features of the K-1, K-3 and IR-1 visas.**

	<b>K-1 Visa</b>	<b>K-3 Visa</b>	<b>IR-1 Visa</b>
Approximate total processing time	9-12 months	9-12 months	12-24 months
Where do I file the petition?	Only in U.S.	Only in U.S.	<i>May</i> file abroad
What petition form do I file?	I-129F only	I-129F <i>and</i> I-130	I-130 only
Are there any major restrictions I should know?	Valid for 6 months; must marry within 90 days of entry to the United States	Multiple entries for two years, but must file for adjustment within 2 years	Processing for green card begins on entry
Can my fiancée/e or spouse bring children?	Yes, his/her unmarried children under 21 may get the K-2 visa within one year of the K-1	Yes, his/her unmarried children under 21 may get the K-4 visa within one year of the K-3	Yes, but a separate IR-2 petition must be filed for each child
Is an interview required?	Usually not; applicants will be notified in exceptional cases	Usually not; applicants will be notified in exceptional cases	Yes
Which Affidavit of Support do I use?	I-134	Neither is required	I-864
Will the Embassy have the original petition/documents INS received?	Yes, the Embassy must have these before the case can be processed.	No, the Embassy will have only a photocopy of the petition's first page.	Yes, the Embassy must have these before the case can be processed.